

REMARKS**I. Status of Claims**

After the above amendments, claims 1 and 3-9, 11-27, and 29 are pending. Claims 1 and 9 are amended and independent. Claim 29 is newly added. Claims 13-27 have been previously withdrawn from consideration. Claim 2, 10, and 28 were previously canceled.

Claims 9 and 11-12 stand rejected under 35 U.S.C. 102(b) and 103(a) as allegedly being anticipated by U.S. Patent No. 5,554,114 to Wallace et al. Claims 1 and 4-6 stand rejected as allegedly being unpatentable over U.S. Patent No. 5,222,949 to Kaldany in view of U.S. Patent No. 6,623,449 to Paskar. Claim 3 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kaldany '949 and Paskar '449 as applied to claim 1, and in further view of U.S. Patent No. 5,718,678 to Fleming. Claims 7-8 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kaldany '949 and Paskar '449 as applied to claim 1, and in further view of U.S. Patent No. 6,858,024 to Berg.

II. Rejections under 35 U.S.C. 102

Claims 9 stands rejected under 35 U.S.C. 102(b) and 103(a) as allegedly being anticipated by U.S. Patent No. 5,554,114 to Wallace.

The undersigned submits that claim 9 is at least patentable over Wallace '114 because it recites, "...a first steerable guide catheter having...a first wall...wherein the first wall contains a first layer, a second layer, and a third layer, each layer having a different hardness." (emphasis added)

Applicant submits that Wallace '114 does not disclose or suggest a three layer catheter, let alone a three layer catheter where each of the layers has a different hardness as recited in claim 9. The Office action cites Wallace '114 as disclosing this claim language. However, the distal infusion segment 26 (interpreted by the Examiner as a steerable guide catheter) in Fig. 5 has two layers (14 and 20) at best. The other component illustrated in Fig. 5 is an introducer catheter 48 (which is identified as the third layer by the office action), however, the introduction catheter 48 is not part of the distal infusion segment 26. It is, instead, an introduction catheter 48 through which the distal infusion segment 26 runs. Thus, the distal infusion segment 26 cited in the office action lacks three layers.

Moreover, even if the introduction catheter 48 was a third layer, there is no reason to believe that its hardness would be different than the hardness of the other layers as suggested by the Examiner. It appears that Official Notice is being utilized to support the rejections of claims 9, 11, and 12. Applicant respectfully traverses the Official Notice taken and requests

evidence to substantiate the alleged motivations to modify Wallace '114. Specifically, the theory that the introduction catheter 48 must be of a harder material than the other two layers and the "assumption" of lubricious treatment in the reference as alleged by the Examiner. Such support is required under MPEP 2144.02 and 2144.03. Wallace '114, by the Examiner's own admission, does not disclose three layers each having a different hardness or lubricious treatment and these unsupported allegations cannot be used to reject the claims.

For at least these reasons claim 9 and its dependent claims are each patentable over Wallace '114.

III. Rejections under 35 U.S.C. § 103(a)

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 5,222,949 to Kaldany in view of U.S. Patent No. 6,623,449 to Paskar.

The undersigned submits that claim 1 is at least patentable over the cited references because it recites, "...the hardness of the wall surrounding the channel, when considered from an initial reference point at the entrance orifice and traveling towards the exit orifice...decreasing in hardness in a first distinct region then increasing in hardness in a second distinct region and then decreasing in hardness again in a third distinct region, the hardness of the third region being different than the hardness of the first region..." (emphasis added)

Neither Kaldany '949 nor Paskar '449 disclose three distinct regions of hardness. Kaldany '949 discloses only two distinct regions. Specifically, Kaldany '949 discloses flexible volumes 10 interspersed with hardened volumes 20. Applicant's claim 1, comparatively, requires three distinct regions of hardness.

For at least these reasons claim 1 and its dependent claims are each patentable over Kaldany '949 and Paskar '449.

IV. Conclusion

In view of the above amendments and remarks, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested.

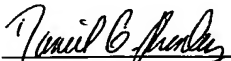
Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

The Commissioner is authorized to charge any fees or credit any overpayments which may be incurred in connection with this paper under 37 C.F.R. §§ 1.16 or 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON LLP

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Daniel G. Shanley
Reg. No. 54,863

KENYON & KENYON, LLP
1500 K Street, N.W., Suite 700
Washington, D.C. 20005
Tel: (202) 220-4200
Fax: (202) 220-4201